IN THE HIGH COURT OF BOMBAY AT GOA
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CRIMINAL WRIT PETITION NO. 20 OF 2003

Agostinho Fernandes,
major, r/o Valkini
Colony No.2, Sanguem,
Goa, presently r/o
Vazanyl, Shiroda, Goa,
c/o Shri Anthony D'Costa. ... Petitioner.

Versus

1. Chief Secretary,
the Government of Goa,
Appellate Authority under
Maintenance of Public
Order and Safety Act
No. 1988 and

2. District Magistrate,
South Goa at Margao,
Goa. ... Respondent.

Mrs. A. A. Agni with Mrs. Asha Dessai and Mrs. N. N. Narvenkar, advocates for the petitioner.

Mrs. W. Coutinho, Additional Public Prosecutor for the respondents.

CORAM : R. J. KOCHAR &
P. V. HARDAS, JJ.

DATE : 27th August, 2003.

ORAL JUDGMENT (Per Hardas, J.)

By an Order dated 28th May, 2002, the District Magistrate, South Goa, Margao, Goa, externed the petitioner from the jurisdiction of the South Goa District and further ordered him not to enter the jurisdiction of South Goa District, for a period of two years from the date of issuance of that Order, which was confirmed by the Appellate Authority by its Order dated 2nd May, 2003. The present petition seeks to quash the said two impugned Orders.

2. The facts in brief as are necessary for the decision of this petition are set out hereunder.

3. A Show Cause Notice came to be issued to the petitioner, which is at Annexure 'A' to the petition. Alongwith the Show Cause Notice an Annexure was annexed giving the facts relating to the offences which have been alleged against the petitioner, in the Show Cause Notice. The said Annexure made a reference to:-

1) Crime No.5/99 under Sections 353, 504 and 506 of the IPC alleged to have been committed by the petitioner on 10th March, 1999. From the second para of the said Annexure it is apparent that a chargesheet in respect of the said Crime had been filed in the Court of the Judicial Magistrate First Class, Sanguem and in the trial, the petitioner was acquitted.

2) Crime No.12/2000 under Sections 353, 427 and 506 read with Section 34 of the IPC, alleged to have been committed by the petitioner on 18th May, 2000. In respect of this Crime it is stated before us by the learned counsel for the petitioner that the petitioner was acquitted and the judgment in this behalf is

annexed to the petition.

3) Crime No.21/2000 under Sections 325 and 504 of the IPC alleged to have been committed by the petitioner on 27th September, 2000. In respect of this Crime the offence was compounded under Section 320 of the Code of Criminal Procedure.

4) Crime No.4/2000 under Sections 326, 504 and 506 of the IPC alleged to have been committed by the petitioner on 10th October, 2000. In respect of this Crime a chargesheet has been filed in the Court of the Judicial Magistrate First Class and the trial is said to be pending.

5) Crime No.30/2001 under Sections 341, 504, 323 read with Section 345 of the IPC alleged to have been committed by the petitioner on 31st December, 2001. In respect of this Crime a chargesheet has been filed and the trial is said to be pending.

6) Crime No.52/1997 under Sections 506 (1) and 509 of the IPC, alleged to have been committed by the petitioner on 4th February,

1997. In respect of this Crime it is stated by the petitioner that the offence was compounded under Section 320 of the Code of Criminal Procedure.

In respect of the two non-cognizable cases which were registered against the petitioner vide NC No.103/2000 under Section 323 of the IPC and NC No.236/2000 under Section 504 of the IPC, the petitioner in the petition states that apparently the complainant in those cases had not filed any complaint cases, at least he has not received any summons in respect of those cases. In respect of another Criminal Case No.50/P/97 under Sections 323, 504, 427 and 506 (ii) of the IPC, the same was compounded. In respect of two Chapter Proceedings under Section 110 of the Criminal Procedure Code said to have been filed before the Sub-Divisional Magistrate, Quepem, on 17th November, 2000 and 7th January, 2000, the learned counsel for the petitioner has stated before us that no bond was executed from him within six months from the institution of the proceedings.

The Annexure further alleged that the petitioner continued his involvement in the offences and during the Panchayat Elections which were concluded in the recent past, he was found indulging in giving threats to the voters and candidates. The Show Cause Notice further recited that the criminal activities of the abovesaid individual have reached

to such a proportion and magnitude that it was felt that he was required to be removed from the locality in the interest of the safety of the public members and in general and only stern action/steps if taken, will ensure maintenance of public order and tranquillity.

4. Despite the service of the Show Cause Notice on the petitioner, the petitioner for the reason that he was indisposed, did not attend the hearing and, therefore, the learned District Magistrate, South Goa, proceeded to pass the order which is impugned in the present petition. The petitioner thereafter filed an appeal before the Appellate Authority and the Appellate Authority after giving the petitioner an opportunity of hearing, dismissed the appeal which is filed by the petitioner. Hence the present petition before us.

5. Mrs. Agni, learned counsel appearing on behalf of the petitioner, has submitted before us that only two cases under the IPC were pending against the petitioner. In the other cases, the petitioner has either been acquitted, or the cases have been compounded. According to the learned counsel for the petitioner, the Chapter Proceedings under Section 110 of the Code of Criminal Procedure, were not germane for deciding the Show Cause Notice, as no bond was executed by the petitioner in response to the institution of these proceedings. She has further stated that the averments

in the Show Cause Notice are extremely vague and no authority could have passed the Order impugned in the present petition based on the vague Show Cause Notice.

6. The learned Additional Public Prosecutor, appearing on behalf of the respondent State has urged before us that this Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, has only to examine if material existed before the authority which passed the Order impugned in the present petition. This Court cannot examine the adequacy or otherwise of the material as this Court in the exercise of its jurisdiction under Article 226 of the Constitution of India does not sit as an Appellate Court and would, therefore, not be entitled to examine the adequacy or otherwise of the material, nor to examine the formation of the subjective satisfaction of the authority, on the basis of the said material.

7. Mrs. Agni, learned counsel appearing on behalf of the petitioner, has placed reliance on the judgment in **Chhotu Siddinath Kunwar vs. State of Maharashtra, 1989 Mh.L.J. 1021.** The learned Judges of the Division Bench of this Court in the aforesaid judgment have observed that mere pendency of cases against the alleged externee since 1987 waiting trial, was not by itself sufficient to hold that an order of externment could be passed after one year of the incident in question. The Division Bench further observed

that the existence of some material before the authority to show that the person was indulging in such acts even thereafter and that his movements were causing alarm, danger or harm to person or property, was necessary. Mere ipse dixit of the police authority was not sufficient. In the factual matrix of the case before the Division Bench, the petitioner therein was an office bearer of a Trade Union and was said to have been involved in three cases which were pending against him and which were all of the year 1987. The earlier order of externment passed by the Deputy Commissioner of Police, which was dated 3rd July, 1987, was struck down by this Court on the ground that the Show Cause Notice was extremely vague and the externee was prejudiced in submitting his reply to the Show Cause Notice. Thereafter, a fresh Show Cause Notice came to be issued, which was passed on the same grounds which were stated in the earlier Show Cause Notice. In that background, therefore, the Division Bench observed that there must be some material before the Deputy Commissioner of Police to say that the petitioner was indulging in such acts even thereafter and that his movements or acts were causing alarm, danger or harm to person or property. In that background, therefore, the Division Bench quashed the externment order. In our respectful opinion, the ratio of the judgment which is cited before us is not applicable to the facts of the present case.

8. Mrs. Agni, learned counsel appearing for the

petitioner has further relied on the judgment of a learned Single Judge of this Court in **Bhausaheb Jagannath Chavan vs. The State of Maharashtra & Ors., 1995 (2) Bom.C.R. 383.** The learned Single Judge of this Court in the aforesaid judgment has held that stale incidents should not be relied upon by the externing authority. In the factual matrix of the reported case, the learned Single Judge came to the conclusion that an offence alleged against the petitioner related to the year 1988 and it was pending and, therefore, according to the learned Judge that would be a stale incident. In the factual matrix of the case, the learned Single Judge then came to the conclusion that the offences alleged against the petitioner therein at serial nos. 2 to 6 would not, by any stretch of imagination, be termed as "valid instances" suggesting that the activities of the petitioner were creating alarm, danger or harm to person or property at large, nor it could give clear idea of the petitioner's movement or acts in the proximate area in the immediate past. In our opinion, therefore, this judgment which is cited by the learned counsel for the petitioner, cannot be applied to the facts of the present case.

9. Mrs. Agni, has further placed reliance on the judgment of the Division Bench of this Court in **Dhondiram Appa Hatkar vs. State of Maharashtra & Ors. 1987 Mh.L.J. 1046.** The learned Division Bench of this Court has held that the provisions of Section 56 or Section 57 of the Bombay

Police Act provided for an extraordinary situation and the Court has to see that the provisions of Section 56, 57 and Section 59 (Bombay Police Act) are strictly complied with. The learned Division Bench further observed that the mere fact that a person had been convicted is not enough but the competent authority empowered to extenuate the person must have reason to believe that such person is likely again to engage himself in commission of offences similar to the one for which he was convicted. The provisions of Section 57 of the Bombay Police Act are entirely different and are not in pari materia with Section 4 of the Goa Maintenance of Public Order and Safety Act, 1988, at least not in pari materia with the provision in respect of which the petitioner has been issued the Show Cause Notice. In our respectful opinion, therefore, the said decision is wholly inapplicable to the facts of the present case.

10. Reliance has also been placed by Mrs. Agni, learned counsel for the petitioner, on an unreported judgment of a Division Bench of this Court dated 6th October, 2000, in Criminal Writ Petition NO. 10 of 2000 (**Babani Shaikh @ Babusab vs. District Magistrate, North Goa, Panaji & Ors.**). The learned Judges of the Division Bench of this Court while striking down the order of externment in paragraph 11 of the aforesaid authority have observed that the order impugned therein was quashed on various grounds, amongst which was the ground of delay. The other grounds on which it was struck

down was that no bond had been obtained from the petitioner therein within six months of the initiation of the Chapter Proceedings and, therefore, the learned Judges came to the conclusion that the acts and activities of the petitioner therein were not enough to come to the conclusion that his acts and activities were causing alarm, harm or danger to the public. In our respectful opinion therefore, even this judgment of the learned Judges of the Division Bench of this Court, is not applicable to the facts of the present case.

11. Turning to the facts of the present case, a perusal of the Show Cause Notice at Exhibit A to the petition, would show that the petitioner has been indulging in activities, or at least offences have been registered against him, from the year 1997 onwards. In 1997, Crime Case at item no. 6 in the Show Cause Notice was registered, though it is said to have been compounded. There are offences of the year 1999 and three offences of the year 2000 which have been registered against the petitioner. There is one offence of the year 2001 which is registered against the petitioner. Apart from this, certain Chapter Proceedings had been initiated, though undisputedly no bond was obtained from the petitioner. Report is made of two non-cognizable cases which were registered against the petitioner pertaining to the year 2000.

12. It is true that the petitioner stands acquitted

in the commission of the offences which are referred to in the Show Cause Notice. In some cases the petitioner has been acquitted and in some cases the offence has been compounded, which assumes the colour of acquittal in view of the provisions of the Code of Criminal Procedure. It is also an admitted fact that only two cases were pending against the present petitioner under the IPC awaiting trial. Mere acquittal of the petitioner in some of the cases and mere compounding of the offence in other cases would not be a circumstance which would negate the fact that no material as such, is existing. Whether a person is acquitted or convicted for the aforesaid offence, the fact that the offence had been registered against him would form the basis for an authority to come to the conclusion that the person is indulging in illegal activities. What the law contemplates is a continuity of the offence or the acts of the person proposed to be externed. Since the offences have been registered against the petitioner since the year 1997 till the year 2001, according to us, a thread of continuity runs through the activities of the present petitioner and, therefore, according to us, there was adequate material before the externing authority to come to the conclusion. In writ jurisdiction this Court cannot examine the adequacy or otherwise of the material which was before the externing authority. This is not a case of there being no material before the externing authority. In view of this, according to us, the impugned Orders need no interference and,

therefore, the petition is dismissed. Rule discharged, with no order as to costs.

R. J. KOCHAR, J.

P. V. HARDAS, J.

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